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Attorneys for Defendants
ZaaZoom Solutions, LLC; ZaZa Pay, LLC;
Automated Electronic Checking, Inc.;;
MultiECom, LLC and Online Resource Center, LLC;
and *Specially Appearing* for Moe Tassoudji and Bill Cuevas

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMBER KRISTI MARSH and **STACIE
EVANS**, individually and on behalf of a class
of similarly situated persons,

Plaintiffs,

v.

ZAAZOOM SOLUTIONS, LLC, a Delaware
Limited Liability Company, et al.

Defendants.

Case No.: 4:11-cv-05226 YGR

San Francisco Sup. Ct.

Case No.: CGC-11-510815

STATEMENT OF RECENT DECISION IN
SUPPPORT OF MOTION TO DISMISS BY
DEFENDANTS ZAAZOOM SOLUTIONS,
LLC; ZAZA PAY LLC; MULTIECOM, LLC;
ONLINE RESOURCE CENTER, LLC AND
AUTOMATED ELECTRONIC CHECKING,
INC. IN RESPONSE TO SECOND
AMENDED COMPLAINT

[Complaint Filed May 9, 2011]

Hg. Date: February 28, 2012

Hg. Time: 2:00 p.m.

Hg. Dept.: TBD

**TO THE CLERK OF THE COURT AND TO ALL PARTIES AND THEIR
ATTORNEYS OF RECORD HEREIN:**

1 **PLEASE TAKE NOTICE** that DEFENDANTS ZAAZOOM SOLUTIONS, LLC;
 2 ZAZA PAY LLC; MULTIECOM, LLC; ONLINE RESOURCE CENTER, LLC AND
 3 AUTOMATED ELECTRONIC CHECKING, INC. ("ZaaZoom Defendants") hereby submit
 4 this Statement Of Recent Decision of the decision of the United States Supreme Court entitled:
 5 *Mims v. Arrow Financial Services*, 565 U.S. ____; (2012 U.S. LEXIS 906) (January 28,
 6 2012)("Mims") for consideration in conjunction with the ZaaZoom Defendants' Motion to
 7 Dismiss pursuant to *F.R.Civ.P. 12(b)(1) and (6)* ("12(b)(6) Motion") in response to Plaintiffs'
 8 Second Amended Complaint to be heard on February 28, 2012, at 2:00 p.m., in the courtroom
 9 to be determined at the above-referenced Federal Court located at 130 Clay Street, Oakland,
 10 California 94612, before the Hon. Yvonne Gonzalez Rodgers, Judge.

11 *Mims* dealt with the question of federal jurisdiction over private actions to enforce the
 12 Telephone Consumer Protection Act of 1991 (47 U.S.C. § 227; "TCPA"). The TCPA arose
 13 because of the intrusive invasion of privacy arising from unrestricted telemarketing. (TCPA,
 14 105 Stat. 2394, note following 47 U.S.C. §227 (Congressional Findings). As a preliminary
 15 matter, Justice Ginsberg, writing the Opinion of the Court, observed: "We have long recognized
 16 that '[a] suit arises under the law that creates the cause of action.' *American Well Works Co. v.*
 17 *Layne & Bowler Co.*, 241 U. S. 257, 260, 36 S. Ct. 585, 60 L. Ed. 987 (1916)." *Mims*, 565 U.S.
 18 ____; 2012 U.S. LEXIS 906, *8 (2012).

19 As pertinent here, the Court recognized that the TCPA expressly provides for a private
 20 right of action for damages to complement the right of State Attorneys General and the FTC to
 21 enforce the TCPA.

22 The TCPA delegates authority to the FCC to ban artificial and prerecorded voice
 23 calls to businesses, §227(b)(2)(A), and to exempt particular types of calls from
 24 the law's requirements, §§227(b)(2)(B), (C). The Act also directs the FCC to
 25 prescribe regulations to protect the privacy of residential telephone subscribers,
 possibly through the creation of a national "do not call" system. §227(c).

26 [¶]

27 **Congress provided complementary means of enforcing the Act.** State
 Attorneys General may "bring a civil action on behalf of [State] residents," if the
 Attorney General "has reason to believe that any person has engaged . . . in a
 pattern or practice" of violating the TCPA or FCC regulations thereunder. 47 U.
 28 S. C. A. §227(g)(1) (*Supp. 2011*). "The district courts of the United States . . .
 have exclusive jurisdiction" over all TCPA actions brought by State Attorneys

General. §227(g)(2). The Commission may intervene in such suits. §227(g)(3).
 [¶] Title 47 U. S. C. §227(b)(3), captioned "Private right of action,"
 provides:

"A person or entity may, if otherwise permitted by the laws or
 rules of court of a State, bring in an appropriate court of that
 State--

"(A) an action based on a violation of this subsection or the regulations
 pre-scribed under this subsection to enjoin such violation,

"(B) an action to recover for actual monetary loss from such a violation,
 or to receive \$500 in damages for each such violation, whichever is
 greater, or

"(C) both such actions."

[¶] A similar provision authorizes a private right of action for a violation of the
 FCC's implementing regulations.

Mims, 565 U.S. ____; 2012 U.S. LEXIS 906, *11-13 (2012).⁴

The instant action brought by class plaintiffs represented by Marsh and Evans asserts
 claims governed by the Restore Online Shoppers Confidence Act (15 U.S.C. § 8401, *et seq.*
 "ROSCA") which does not provide for private rights of action at all. (15 U.S.C. § 8404
 (enforcement by the FTC); 15 U.S.C. § 8405(a)-(e) (enforcement by State Attorneys General
 with notice to the FTC).) *Mims* underscores the principle that when the Congress decides to
 allow private rights of action in areas of electronic commerce deemed of national importance
 Congress knows how to do so. It did not do so with ROSCA.

Dated: January 27, 2012

DENNIS A. WINSTON,
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By /s/ Dennis A. Winston
 Dennis A. Winston Attorneys for
 Defendants ZaaZoom Solutions, LLC; ZaZa Pay, LLC;
 Automated Electronic Checking, Inc., MultiECom, LLC
 and Online Resource Center, LLC and *Specially*
Appearing for Defendants Moe Tassoudji and Bill Cuevas

⁴ Unless otherwise indicated, all emphasis supplied.